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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 SANDRA HARRIS,) Case No. CV 13-7618-PJW
11 Plaintiff,)
12 v.) MEMORANDUM OPINION AND ORDER
13 CAROLYN W. COLVIN,)
14 ACTING COMMISSIONER OF THE)
15 SOCIAL SECURITY ADMINISTRATION,)
16 Defendant.)
17

18 I. INTRODUCTION

19 Plaintiff appeals a decision by Defendant Social Security
20 Administration ("the Agency"), denying her application for Disability
21 Insurance Benefits ("DIB") and Supplemental Security Income ("SSI").
22 She claims that the Administrative Law Judge ("ALJ") erred when she
23 found that Plaintiff was not credible. For the reasons explained
24 below, the Court concludes that the ALJ did not err.

25 II. SUMMARY OF PROCEEDINGS

26 In February 2011, Plaintiff applied for DIB and SSI, alleging
27 that she had been unable to work since September 2009, due to
28 osteoarthritis and Turner's Syndrome. (Administrative Record ("AR")
98-111.) Her applications were denied initially and on reconsidera-

1 tion and she requested and was granted a hearing before an ALJ. (AR
2 51-64, 67-71, 75-91.) On June 1, 2012, she appeared with counsel and
3 testified at the administrative hearing. (AR 19-50.) On July 27,
4 2012, the ALJ issued a decision denying benefits. (AR 8-15.) The ALJ
5 found that Plaintiff's impairments--Turner's syndrome, hypothyroidism,
6 obesity, history of cataract surgery, presbyopia, and astigmatism--
7 were severe but that they did not prevent her from performing her past
8 work as a security guard. (AR 10-14.) In doing so, the ALJ rejected
9 Plaintiff's testimony that her impairments prevented her from working.
10 (AR 13-14.) Plaintiff appealed to the Appeals Council, which denied
11 review. (AR 1-4.) She then commenced this action.

12 III. ANALYSIS

13 Plaintiff testified that she could no longer work due to constant
14 pain, particularly in her joints, caused by Turner's syndrome. (AR
15 30-39.) The ALJ rejected this testimony. (AR 12-14.) Plaintiff
16 contends that she erred in doing so. For the following reasons, the
17 Court concludes that the ALJ did not err.

18 ALJs are tasked with judging the credibility of the claimants.
19 In making these credibility determinations, they may employ ordinary
20 credibility evaluation techniques. *Smolen v. Chater*, 80 F.3d 1273,
21 1284 (9th Cir. 1996). But, where a claimant has produced objective
22 medical evidence of an impairment which could reasonably be expected
23 to produce the symptoms alleged and there is no evidence of
24 malingering, the ALJ can only reject the claimant's testimony for
25 specific, clear, and convincing reasons, *id.* at 1283-84, that are
26 supported by substantial evidence in the record. *Thomas v. Barnhart*,
27 278 F.3d 947, 959 (9th Cir. 2002).

1 The ALJ set out several reasons why Plaintiff's testimony was not
2 credible. The primary reason, however, was because Plaintiff had been
3 able to work full time for years and had only stopped working when she
4 was laid off from her job. (AR 13.) The ALJ noted that Plaintiff had
5 been born with Turner's syndrome and that it had not prevented her
6 from working before she was laid off. (AR 13.) She also noted that
7 there was no evidence in the record that Plaintiff's symptoms had
8 changed since she was laid off and inferred that that indicated that
9 her condition did not preclude work. (AR 13.)

10 This is a valid reason for questioning Plaintiff's testimony that
11 she could no longer work. *Bruton v. Massanari*, 268 F.3d 824, 828 (9th
12 Cir. 2001); *Copeland v. Bowen*, 861 F.2d 536, 542 (9th Cir. 1988). And
13 it is particularly relevant in this case as the evidence established
14 that Plaintiff had worked full time from 1982 until 2009 and there was
15 no evidence in the record that her condition changed after she was
16 laid off in 2009. (AR 116-20.)

17 Plaintiff disagrees. She points out that Turner's Syndrome is a
18 progressive disease and that, though there is no evidence in the
19 record that her condition deteriorated after she was laid off, there
20 is also no evidence that it did not deteriorate. In her view, the ALJ
21 erred when she assumed that Plaintiff's condition had remained stable.
22 (Joint Stip. at 9.)

23 This argument is rejected. The evidence supports the ALJ's
24 finding that Plaintiff's condition did not materially change after she
25 was laid off. Plaintiff's argument that the absence of such evidence
26 is not proof that it did not change is also rejected. Even assuming
27 that that were true, it does not undermine the Agency's argument here.
28 It was Plaintiff's burden to establish that she was disabled and by

1 not presenting evidence that her condition changed after she was laid
2 off she failed to do so. See *Parra v. Astrue*, 481 F.3d 742, 746 (9th
3 Cir. 2007) (“[T]he burden is on the claimant to establish [her]
4 entitlement to disability insurance benefits.”) (citation omitted).
5 Thus, the ALJ did not err when she questioned Plaintiff’s testimony
6 that she could no longer work in the face of evidence establishing
7 that her condition had not prevented her from working before the
8 layoff and had not changed since the layoff.

9 The ALJ also focused on the fact that Plaintiff could cook, run
10 errands, and shop for groceries, concluding that this suggested that
11 she was not as impaired as she claimed. (AR 13.) The record does not
12 support this conclusion. Plaintiff testified to very minimal activity
13 and explained that, when she performed it, she was forced to sit down
14 after about ten minutes of walking and/or standing. (AR 37-42.) This
15 type of activity does not suggest that Plaintiff was being
16 disingenuous when she testified that her condition, and the pain it
17 caused, prevented her from working. See, e.g., *Vertigan v. Halter*,
18 260 F.3d 1044, 1050 (9th Cir. 2001) (“This court has repeatedly
19 asserted that the mere fact that a plaintiff has carried on certain
20 daily activities, such as grocery shopping, driving a car, or limited
21 walking for exercise, does not in any way detract from her credibility
22 as to her overall disability.”).

23 The Court also rejects the ALJ’s finding along similar lines that
24 Plaintiff’s ability to perform these activities showed that she could
25 work because the “physical and mental capabilities requisite to
26 performing [them] . . . replicate those necessary for obtaining and
27 maintaining employment.” (AR 13.) The ALJ failed to explain the
28 connection between these activities and holding down a full-time job.

1 And the Court is unable to conjure any connection on its own. As
2 such, this reason is rejected. *Gonzalez v. Sullivan*, 914 F.2d 1197,
3 1201 (9th Cir. 1990) (holding ALJ errs when he fails to explain how
4 ability to perform daily activities translated into the ability to
5 perform work).

6 The ALJ also questioned Plaintiff's testimony because none of her
7 doctors opined that she was disabled or even seriously limited. (AR
8 13.) The ALJ reasoned that, if Plaintiff was as debilitated as she
9 claimed, her doctors would have recognized this and indicated in the
10 medical charts that she could not work because she was disabled. (AR
11 13-14.)

12 Plaintiff takes exception to this finding. Though she recognizes
13 that the ALJ was right, she argues that there may have been other
14 reasons why the doctors failed to mention that she was disabled and/or
15 failed to restrict her activities due to her limitations. (Joint
16 Stip. at 10-11.)

17 The Court finds that the record supports the ALJ's finding on
18 this ground and is a reasonable basis for questioning Plaintiff's
19 claims of pain. Though the doctors may have had other reasons for not
20 opining that she was disabled, or even restricted, it stands to reason
21 that their notes would have reflected the progression of her
22 limitations and the imposition of some restrictions on her activities
23 over time, both at work and at home. The absence of such entries is
24 telling.¹

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26 ¹ Plaintiff complains that the ALJ improperly rejected a July
27 2011 note referencing an X-ray report on the ground that the X-ray was
28 not included and, therefore, the note was hearsay. (AR 12.) The note
states, in full, "X-ray only showed degenerative joint disease changes
of hand and spine." (AR 407.) The Court agrees with Plaintiff's

1 In the end, the Court finds that two of the reasons cited by the
2 ALJ for questioning Plaintiff's testimony are supported by the
3 evidence and two are not. The issue that remains is whether these two
4 reasons are enough to uphold the ALJ's credibility finding. See
5 *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir.
6 2008) (holding error by ALJ in credibility determination is harmless
7 "[s]o long as there remains substantial evidence supporting the ALJ's
8 conclusions on . . . credibility and the error does not negate the
9 validity of the ALJ's ultimate credibility conclusion."). Ultimately,
10 the Court finds that they are. It is clear from the record that
11 Plaintiff had no difficulty working prior to being laid off from her
12 full-time job as a security guard and that her condition remained
13 relatively constant after being laid off. In addition, the medical
14 records, which consists almost exclusively of Plaintiff's Kaiser
15 Permanente records (AR 162-386), and the doctors entries therein do
16 not support her testimony that her condition is so debilitating that
17 she cannot work. As such, the ALJ's decision to discount Plaintiff's
18 testimony that she could not work will be upheld.

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26 premise that ALJs should not reject evidence on the ground that it is
27 hearsay because the Rules of Evidence do not apply to Social Security
28 cases. But, even assuming that the ALJ had rejected the note on that
ground and even assuming, further, that the Court were to accept the
statement contained in the note, it would not change the outcome of
this case or the credibility analysis.

IV. CONCLUSION

For these reasons, the Agency's decision is affirmed and the case is dismissed with prejudice.

IT IS SO ORDERED.

DATED: December 9, 2014.



PATRICK J. WALSH
UNITED STATES MAGISTRATE JUDGE